

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

MAR 24 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2009-0317-PR
)	DEPARTMENT B
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
GREGORY NIDEZ VALENCIA, JR.,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-51447

Honorable Howard Fell, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Gregory N. Valencia

Buckeye
In Propria Persona

E C K E R S T R O M, Presiding Judge.

¶1 In this petition for review, Gregory Valencia challenges the trial court's dismissal of the eighth petition for post-conviction relief he has filed pursuant to Rule 32, Ariz. R. Crim. P., since he was sentenced in 1996, at age eighteen, to spend his natural life in prison. The trial court imposed that sentence, along with two concurrent, 7.5-year terms, after a jury had found Valencia guilty of first-degree murder based on felony murder and two counts of first-degree burglary. More than a decade ago, this court vacated one of his burglary convictions on appeal but affirmed the other two convictions and sentences. *State v. Valencia*, No. 2 CA-CR 96-0652 (memorandum decision filed April 30, 1998).

¶2 In the most recent of our several memorandum decisions denying Valencia relief, *State v. Valencia*, Nos. 2 CA-CR 2006-0182-PR, 2 CA-CR 2006-0322-PR, 2 CA-CR 2007-0007-PR (consolidated) (memorandum decision filed May 31, 2007), we reviewed the chronology and contents of his various requests for post-conviction relief. Before bringing the present petitions for post-conviction relief and for review, Valencia had filed seven previous Rule 32 petitions in the trial court and five petitions for review. He unsuccessfully has asserted claims of newly discovered evidence and multiple claims of ineffective assistance of counsel, all of which have been found either meritless or precluded.

¶3 In his latest petition for post-conviction relief, Valencia presented what he correctly characterized as a nonprecluded claim of actual innocence pursuant to Rule 32.1(h) and again asserted claims of ineffective assistance of trial and Rule 32 counsel.

The trial court denied relief in a written minute entry, which states, in pertinent part, as follows:

Based on the Court's review of the record, the Petitioner's claims regarding counsels' effectiveness, the admissibility of his statements, and the trial court's failure to conduct a "mandatory pre-hearing conference" were raised in his previous petitions for post-conviction relief. *See State v. Valencia*, 2 CA-CR 2007-0007 (May 31, 2007) (memorandum decision). As a result, Rule 32.2, Ariz. R. Crim. P., precludes him from raising them again.

The Court notes that the Petitioner is correct that claims of actual innocence escape Rule 32.2 preclusion. However, the arguments the Petitioner advances in support of his actual innocence claim are identical to arguments he has raised in virtually all of his prior petitions for post-conviction relief. Simply relabeling these arguments with a header of "actual innocence" does not entitle the Petitioner to have those claims fully re-litigated. Furthermore, even though the Petitioner asserts that there is new evidence showing that he is actually innocent, he cites to no such new evidence and, instead, simply argues that the evidence introduced at trial shows that [he] did not commit a burglary and, therefore, could not have committed first-degree felony murder. Based on its review of the pleadings and the record, the Court finds that the Petitioner has failed to show that he is entitled to relief on the basis of newly discovered evidence, Rule 32.1(e), Ariz. R. Crim. P., or on the basis of actual innocence.

¶4 We will not disturb a trial court's denial of post-conviction relief unless the court clearly has abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no abuse here. As the trial court noted, Valencia's arguments are, in substance, only an invitation to revisit the evidence presented and issues raised at trial, on appeal, and in his previous post-conviction proceedings. The court properly declined Valencia's latest invitation to do so, and we approve its ruling.

Nothing in Valencia's petition for review suggests the court abused its discretion in denying his eighth post-conviction petition.

¶5 Although we grant Valencia's petition for review, we deny relief.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Judge